



Federal Communications Commission
Washington, D.C. 20554

January 4, 2002

Dennis J. Kelly, Esq.
Law Office of Dennis J. Kelly
P.O. Box 6648
Annapolis, MD 21401

RE: Request for Waiver of Late Charge Penalty for
Regulatory Fees for FY 1998
Brazos Broadcasting Company
Fee Control No. 00000 CDMC-99-005 &
RROG-01-002

Dear Mr. Kelly:

This is in response to the Petition for Reconsideration, filed on behalf of Brazos Broadcasting Company (Brazos), of the decision of the Managing Director, by letter of Mark A. Reger, Chief Financial Officer, dated October 26, 2000, denying your request, filed on behalf of Brazos, for waiver of the late charge penalty for late payment of regulatory fees for Fiscal Year (FY) 1998.

You originally requested a waiver of the late charge penalty for late payment of FY 1998 regulatory fees on the grounds that Brazos' failure to submit timely payment was due to the inadvertent mistake of submitting a check made payable to you, its attorney. You further argued that the Commission increased the amount of time necessary to correct the mistake by notifying Brazos rather than you of the error and that thus it was unfair to require payment of the late charge penalty.

As noted above, the Commission denied your request by letter dated October 26, 2000. The letter stated that your contentions had been considered but that you had not indicated nor substantiated that Brazos had met its obligations to ensure that the Commission received its fee payment no later than the last date on which regulatory fees were due for FY 1998. The letter also noted that, as the incorrectly drafted check was submitted on September 18, 1998, the last date on which regulatory fees were due for FY 1998, any subsequent corrected payment could not have been filed timely, whether you or Brazos were notified of the error.

In your request for reconsideration, you argue that assessment of the late charge penalty is unfair because "the situation could have been remedied by a simple contact by the Managing Director's office to [you] - a contact required by Section 1.12 of the Commission's Rules." You further state that, if you have been notified on September 30, 1998, rather than Brazos, you would have come to the Commission's office to endorse the check received by Mellon Bank in Pittsburgh, Pennsylvania. Without addressing whether Section 1.12 would extend to the filing of a licensee's regulatory fee by an attorney, we note that the Office of Managing Director addressed

this argument in denying your request. As stated in the October 26, 2000 letter, the original regulatory fee submission of the incorrectly drafted check was not made until the last date on which FY 1998 regulatory fees were due and therefore any subsequent corrected payment still would have incurred the late charge penalty.

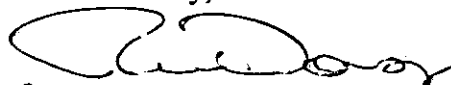
You further argue that the late charge penalty is invalid because it should be considered a duty, impost, or excise under the Constitution and it does not meet the Constitutional requirements that duties, imposts, and excises be uniform. In fact, the late charge penalty as set by Congress is uniform: the Commission is to assess an additional charge of 25% of the amount of any regulatory fee not paid in a timely manner. 47 U.S.C. § 159(c)(1).

You finally argue that the constitutionality of the regulatory fee scheme is in doubt because it raises revenue for the federal government, but was adopted by the Commission. You note that the Origination Clause of the Constitution requires that "[a]ll Bills for raising Revenue shall originate in the House of Representatives." U.S. Const., art. I, §7, cl.1. The Commission's regulatory fee requirement implements Section 9 of the Communications Act of 1934, as amended. Section 9 provides that the Commission shall assess and collect regulatory fees to recover the costs of specific regulatory activities of the Commission. 47 U.S.C. § 159(a)(1). A statute that provides for monetary assessments to fund a particular governmental program, as does Section 9, "is not a 'Bill for raising Revenue' within the meaning of the Origination Clause." *United States v. Munoz-Flores*, 495 U.S. 385, 398 (1990); *see also Sperry Corp. v. United States*, 925 F.2d 399 (Fed.Cir. 1991) (upholding statutory fee assessment and finding *Munoz-Flores* Origination Clause analysis applies in case where Congress establishes assessment obligation after the creation of the governmental program).

After careful review of the issues raised in your request for reconsideration, we do not find any basis for modifying the decision denying the request for waiver of the late charge penalty. Payment of the late charge penalty in the amount of \$810.75 was assessed and due on September 19, 1998. The late charge penalty must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. You are cautioned that the failure to submit payment as required may result in further sanctions, including the initiation of a proceeding to recover the penalty and accrued interest pursuant to the provisions of the Debt Collection Improvement Act of 1996.

If you have any questions concerning this letter, please call the Revenue & Receivables Operations Group at 418-1995.

Sincerely,



for Mark Reger
Chief Financial Officer

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BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RECEIVED
In re

BRAZOS BROADCASTING COMPANY

For Waiver of Late Charge
Penalty for FY 1998 Regulatory Fees

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)
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) Fee Control No.
) 00000CDMC-99-005
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TO: Office of Managing Director

PETITION FOR RECONSIDERATION

Brazos Broadcasting Company (Brazos), by its attorney, and pursuant to Section 1.106 of the Commission's Rules, hereby respectfully submits its Petition for Reconsideration of the letter of Mark A. Reger, Chief Financial Officer, Office of Managing Director, dated October 26, 2000 (see attached), denying Brazos' request for a wavier of the "late charge penalty for late payment of the Fiscal Year (FY) 1998 regulatory fees". As noted below, the imposition of this late fee is unfair, as the situation could have been remedied by a simple contact by the Managing Director's office to the undersigned—a contact required by Section 1.12 of the Commission's Rules. Because the Commission failed to follow its own rules, it is blatantly unfair for it to impose a penalty of \$810.75 on Brazos. In support whereof, the following is shown:

1. At the outset, it should be pointed out that Brazos is no longer the licensee of KBTX-TV. The station was sold by Brazos to KWTX-KBTX License Corp. in a transaction consummated on October 1, 1999.

2. While Mr. Reger's October 26, 2000 letter states that "we have fully considered all of your contentions", the letter appears to proceed under the presumption that we did not submit our regulatory fee submission to Pittsburgh on or before the due date. The fact of the matter is, we did.

3. The only problem was that we submitted a check made payable to Dennis J. Kelly, not to the Federal Communications Commission-a mere oversight and innocent mistake which did not evince a contempt for the due date in question. Had the Commission's staff contacted the undersigned, as Section 1.12 of the Rules suggests the staff had an obligation to do, the undersigned could have quickly come to the Commission's office, endorsed the check to the FCC, and the matter could have been resolved. Instead, the Commission seeks to assess a \$810.75 penalty, which under any norm of equity or decency it is not entitled to have.

4. Furthermore, the imposition of this penalty, as well as the entire regulatory fee scheme, raises constitutional questions. The regulatory fee qualifies variously as a tax, an impost, a duty and/or an excise, nothing more and nothing less. Article I, Section 8, clause

1 of the federal Constitution requires that "all Duties, Imposts and Excises shall be uniform throughout the United States". If there is anything about the regulatory fee scheme that is prominent, it is that it is not "uniform". For example, the dollar amount of the late fee is not uniform, but varies from case to case. A licensee in the New York metropolitan area pays a different rate from a licensee in rural east Texas.

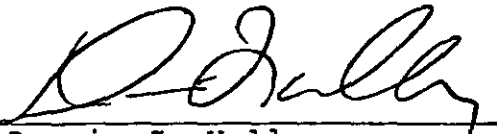
5. Additionally, Article I, Section 7, clause 1 requires that "all Bills for raising Revenues shall originate in the House of Representatives". The FY 1998 regulatory fee scheme, a revenue raising program for the federal government, was adopted by the FCC. Therefore, the constitutionality of the FY 1998 regulatory fee scheme is in grave doubt.

6. For the foregoing reasons, Brazos urges the Office of Managing Director to forgive the 25 percent penalty it has sought to assess against Brazos.

WHEREFORE, it is urged that this Petition for Reconsideration BE GRANTED.

Respectfully submitted,

BRAZOS BROADCASTING COMPANY

By 
Dennis J. Kelly
(D. C. Bar #292631)
His Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 6648
Annapolis, MD 21401
Telephone: 888-322-5291

November 27, 2000

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 26 2000

OFFICE OF
MANAGING DIRECTOR

Mr. Dennis J. Kelly
Post Office Box 6648
Annapolis, MD 21401

RE: Request for Waiver of Late Charge
Penalty for FY 1998 Regulatory Fees
Brazos Broadcasting Company
Fee Control No. 00000CDMC-99-005

Dear Mr. Kelly:

This is in response to your request for waiver of the late charge penalty for late payment of the Fiscal Year (FY) 1998 regulatory fees, filed on behalf of Brazos Broadcasting Company (Brazos).

You state that on September 18, 1998, the due date for payment of FY 1998 regulatory fees, you submitted a check from Brazos that, by inadvertent mistake, was made payable to yourself, rather than to the Federal Communications Commission. You further state that the Commission notified Brazos of the mistake directly, rather than yourself, despite section 1.12 of the Commission's rules and resulting in a needlessly longer period of time to correct the mistake. Under these circumstances, you maintain, a 25 percent late penalty is "harsh and unfair."

We have fully considered all of your contentions. The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that Brazos Broadcasting Company met this obligation. In this regard, we note that even if the Commission had notified you of the mistake directly, the payment would have been late. Therefore, the penalty was properly imposed and your request is denied.

Payment of the late charge penalty in the amount of \$810.75 was assessed and due on September 19, 1998. The late charge penalty must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. You are cautioned that the failure to submit payment as required may result in further sanctions and the initiating of a proceeding to recover the penalty and accrued interest pursuant to the provisions of the Debt Collection Improvement Act. of 1996.

Mr. Dennis J. Kelly

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If you have any questions concerning this letter, please call the Credit & Debt Management Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Mark A. Reger
Chief Financial Officer